

The Department of Community Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: May 24, 2006
Re: **REZONING: Section 35.1-43.1, Conditional Zone or Zone Approval**

I. PETITIONER

The City of Lynchburg Planning Commission, 900 Church Street, Lynchburg, VA 24504
Representative: Tom Martin, AICP, City Planner, City of Lynchburg Planning Division, 900 Church Street, Lynchburg, VA 24504

II. LOCATION

The proposed amendments would apply to all properties submitted for a conditional rezoning.
Property Owners: N/A

III. PURPOSE

The purpose of the proposed revision is to allow the City Council more flexibility in accepting voluntarily submitted proffers during the City Council meeting. Currently the City Council can not accept voluntarily submitted proffers, amendments or deletions unless the proffers were received prior to the advertising of the public hearing at which City Council renders its decision.

IV. SUMMARY

- Amendment is in compliance with the *Comprehensive Plan 2002-2020* which recommends ensuring flexibility in zoning codes by identifying site, building, buffer, design and other code provisions that restrict development potential. **(pg7.8)**
- Amendment would allow the City Council more flexibility in accepting voluntarily submitted proffers.

The Planning Division recommends approval of amending Section 35.1-43.1, Conditional Zone or Zone Approval.

V. FINDINGS OF FACT

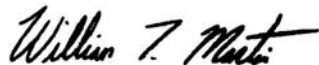
1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* was adopted in September 2002 and recommends ensuring flexibility in zoning codes by identifying site, building, buffer, design and other code provisions that restrict development potential. **(pg 7.8)**
2. **Zoning.** Section 35.1-41.1, Conditional Zone or Zone Approval was adopted by the City Council in April 1980.
3. **Board of Zoning Appeals (BZA).** N/A
4. **Previous Actions.** N/A
5. **Site Description.** N/A

6. **Proposed Use of Property.** N/A
7. **Traffic.** N/A
8. **Stormwater Management.** N/A
9. **Emergency Services.** N/A
10. **Impact.** The adoption of the proposed amendments would benefit the City Council, citizens and project developers in that the City Council would have more flexibility in accepting voluntarily submitted proffers at the meeting in which it renders its decision on the Conditional Zoning.
11. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDED MOTION

Based on the preceding Findings of Fact, the Planning Commission recommends amending Section 35.1-43.1, Conditional Zone or Zone Approval to allow the City Council to accept voluntarily submitted proffers, amendments or deletions at the meeting where the decision is rendered.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Capt. Michael L. Thomas, Fire Marshal
Mr. J. Lee Newland, Director of Engineering
Lt. Danny R. Marks, Lynchburg Police Department Field Operations Bureau
Capt. Todd Swisher, Lynchburg Police Department North Division
Capt. J.P. Stokes, Lynchburg Police Department East Division
Capt. Al Thomas, Lynchburg Police Department South Division
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Ms. Annette Chenault, Planner II
Ms. Nicole Gilkeson, Community Development Planner

VII. ATTACHMENTS

1. **Proposed Zoning Ordinance Amendment**
(see attached ordinance)

Sec. 35.1-43.1. Conditional zone or zone approval.

(a) Purpose of Conditional Zoning. The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development and use of land in those situations in which peculiar specific circumstances indicate that the existing zone ordinance district regulations are not adequate. In such instances reasonable conditions voluntarily proffered by the owner of the subject property to which such conditions are applicable for the protection of the community (which conditions are not generally applicable to other land similarly zoned) when considered with existing zoning ordinance district regulations should cause the requested rezoning to be compatible with existing zoning and uses in the area.

(b) Approval of Conditions as part of a Rezoning Amendment to Zoning Map. The owner of the property which is the subject of a rezoning request shall, if ~~he~~ they elects to obtain conditional zoning, voluntarily proffer in writing such conditions as ~~he~~ they deems appropriate at the time of filing an application to rezone the property or by such later date as the commission shall establish in its rules and regulations; but in any event before the Planning Commission makes its recommendation to City Council.

In the event that additions thereto or modifications thereof are desired by the owner of the property which is the subject of the rezoning request the same shall be made in writing no less than twenty-one (21) days prior to the time at which the Planning Commission makes recommendation to City Council unless the commission:

- (1) Specifically waives such time period; or
- (2) Specifically establishes such greater or lesser time period as it deems reasonable.

City Council may consider additional proffers, deletions, and/or amendments to all such conditions provided same have been voluntarily proffered in writing by the owner of the property which is the subject of the rezoning request. ~~prior to advertising the public hearing at which City Council renders its decision thereof.~~

(c) Permitted conditions as part of a Rezoning or Amendment to Rezoning Map. City Council may approve reasonable conditions to rezoning; provided that the following criteria are met:

- (1) The rezoning itself must give rise to the need for the conditions.
- (2) Such conditions shall have a reasonable relation to the rezoning.

(3) Such conditions shall not include a cash contribution to the City.

(4) Such conditions shall not require mandatory dedication of real or personal property for open space, parks, schools, fire stations, or other public facilities not otherwise authorized by law.

(5) Such conditions shall not include payment for or construction of off-site improvements except those sewerage or drainage facilities otherwise authorized by law.

(6) No condition shall be proffered that is not related to the physical development or physical operation of the property.

(7) All such conditions shall be in conformity with the City's ~~General~~ Comprehensive Plan.

(8) The provisions of this ordinance shall not be used for the purpose of discrimination in housing.

(d) Records of Conditional Zoning.

(1) The zoning map shall show by an appropriate symbol the existence of conditions attached to the zoning.

(2) The ~~Superintendent of Inspections~~ City Planner shall maintain a Conditional Zoning Index which Index shall be available in the ~~Inspections~~ Planning Division Office for public inspection during regular office hours. The Index shall provide ready access to the ordinance creating such conditions in accordance with the article and shall clearly list all conditions applicable to each.

(3) Before any permits can be issued to begin construction or for the occupancy of an existing structure, the petitioner shall file and record in the Office of the Clerk of the Circuit Court of the City of Lynchburg, Virginia, the conditions approved by City Council.

These conditions shall be indexed under the names of the landowners of the property being conditionally zoned. The petitioner shall submit a notarized letter to the Clerk of City Council, the ~~Superintendent of Inspections~~ Zoning Administrator and the City Planner certifying that the conditions have been recorded with the Clerk of the Circuit Court.

(e) Enforcement and Guarantees. In order to ensure the intent and purpose of conditional zoning approved in accordance with this article, the ~~Superintendent~~

~~of Inspections~~ Zoning Administrator or ~~his~~ their agents shall be vested with all necessary authority on behalf of City Council to administer and enforce conditions attached to a zoning or amendment or a zoning map including:

- (1) Ordering in writing, compliance with such conditions.
- (2) Bringing of appropriate legal action or proceeding to ensure compliance.
- (3) Requiring a guarantee or contract or both for construction of physical improvements approved as condition(s) of the rezoning.
- (4) Denial of zoning certification with regard to the issuance of any required use, occupancy or building permit.
- (5) Making an annual compliance report to the City Planner on the anniversary of such approval certifying compliance with such conditions.
- (f) Review of ~~Superintendent of Inspections'~~ Zoning Administrators' Decision. Any applicant who is aggrieved by the ~~Superintendent of Inspections'~~ Zoning Administrators' decision or actions under subsection E regarding enforcement of guarantees as provided for in subsection E above may petition the City Council for review of such decision(s). Such petition shall be filed with the ~~Superintendent of Inspections~~ Zoning Administrator no less than thirty (30) days prior to a regularly scheduled meeting of City Council designated for hearing of zoning matters. The ~~Superintendent of Inspections~~ Zoning Administrator shall forward the petition and the justification for ~~his~~ their decision(s) to City Council and to the aggrieved person no less than ten (10) days prior to the next regularly scheduled meeting designated for hearing of zoning matters. Written notice of such meeting shall be given to all parties as required by Section 15.1-431 of the Code of Virginia.
- (g) Amendments and Variations of Conditions. All amendments and/or variations of adopted conditions shall be made in accordance with provisions of Section 35.1-43 above and other applicable law.
- (h) After City Council has taken official action either granting, denying, or permitting withdrawal of a petition for any change in zoning or any change of zoning conditions, no other petitions for substantially the same change(s) shall again be considered in less than twelve (12) months from the date of such official action. (Ord. No. O-80-101, § 2, 4-22-80)